

**IN THE CUSTOMS, EXCISE & SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA**

REGIONAL BENCH – COURT NO.1

Service Tax Appeal No. 76914 of 2017

(Arising out of Order-in-Appeal No.08/ST/GST-BBSR/2017 Dated 31.08.2017 passed by Commissioner (Appeals), GST, CX & Customs, Bhubaneswar.)

M/s. Emenes Enterprises

(Gaganapur, Jeypore, Koraput, Odisha, 764002)

Appellant

VERSUS

**Commissioner of CGST & Central Excise, Bhubaneswar-I
Commissionerate**

(C. R. Building, Rajaswa Vihar, Bhubaneswar, Odisha-751007)

Respondent

APPEARANCE :

None for the Appellant

Mr. S. S. Chattopadhyay, Authorized Representative for the Respondent

CORAM:

HON'BLE MR. R. MURALIDHAR, MEMBER (JUDICIAL)

FINAL ORDER NO.75799/2023

Date of Hearing : 21 June 2023

Date of Decision : 21 June 2023

PER R. MURALIDHAR

No one has appeared on behalf of the Appellant inspite of notice. It is seen from the records that the intimation letter sent to the Appellant is being returned by the Postal Authorities. Since the matter pertains to 2017, perused the Appeal Papers and other relied documents with the help of Learned AR.

2. It is seen that the Lower Authorities have confirmed the demand of Rs.4,02,285/- along with interest and equal amount of penalty under Section 78. Being aggrieved by the impugned OIA, the Appellant has filed the present Appeal before the Tribunal. On perusal of OIA, it is seen that the Appellant has not contested the demand and has admitted that they are required to pay an amount of Rs.4,02,285/-. Even in the present Appeal, in the Grounds of Appeal, they have stated that payment of Rs.6,00,694/- has to be received from their client M/s BILT. Once, this amount received from them, the Appellant will discharge the Service Tax liability. The Appellant has also enclosed the copy of Challan dated

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30/12/2014 showing the payment of Service Tax of Rs.6,67,340/- claiming that this amount was paid towards discharge of the liability of Rs.4,02,285/- along with interest and penalty. Since this Challan has been enclosed without any verification or certification by the Service Tax Department, the Bench is not in a position to check the veracity of the claim of the Appellant that this Challan payment is towards the arrived at liability of Rs.4,02,285/- only.

3. The Appeal is being disposed of as per the following conditions:-

(i) The Appeal filed by the Appellant in respect of Rs.4,02,285/- contested by them is dismissed.

(ii) The Appellant is required to pay interest of this amount.

(iii) Considering the factual details, the Appellant is being given an opportunity to pay the penalty @ of 25% of the confirmed demand amount.

(iv) I direct to concerned Service Tax Officials to verify the veracity of GAR-7 Challan dated 30/12/2014 for Rs.6,67,340/-. If the claim of the Appellant is found to be correct, the confirmed Service tax demand of Rs. 4,02,285/- is to be adjusted against this payment. The interest liability is to be arrived at and the same has to be adjusted this Challan. After adjusting these amounts, the Service Tax Department will proceed for recovery of the balance amount on account of interest and penalty, if any.

(v) If the Challan is found to be not correct and does not pertain to the confirmed demand of Rs.402,285/- but pertains to some other normal payment made by the Appellant, the penalty will be increased to 100%. In that case, the Service Tax Department to go ahead to recover the Service Tax amount Rs.4,02,285/- and interest thereon and penalty of Rs.4,02,285/-

4. The Appeal is disposed of thus.

(Dictated and pronounced in the open court.)

Sd/-

(R. Muralidhar)
Member (Judicial)

Pooja